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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,680	09/14/2001	Peter Cox	5977-01-SD	8893

7590 06/05/2006

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

### DETAILED ACTION

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 1/3/06. The submission, however, is not fully responsive to the prior Office action because Applicant has cancelled claims 1-39 and added claims 40-61, which are directed to non-elected invention. The elected Group is Group 1, claims drawn to a product of an isolated nucleic acid encoding a beta 3 sub-unit from a voltage gated sodium channel (species of SEQ ID NO:2 and 4) and a first method of use to amplify beta 3 subunit nucleic acids. Group I also contains the encoded polypeptide. None of the newly added claims read on the elected invention. Since applicant has received an action on the merits for the originally presented invention (Group I), this invention has been constructively elected by original presentation for prosecution on the merits.

Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., **applicant cannot switch inventions**). See 37 CFR 1.145. Any newly submitted claims that are directed to an invention that is independent and distinct from the invention previously claimed will be withdrawn from consideration and not entered. **An RCE is not the filing of a new application.** Thus, the Office will not convert an RCE to a new application such as an application filed under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d).

Accordingly, claims 40-61 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP 821.03.

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2. Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nirmal S. Basi whose telephone number is 571-272-0868. The examiner can normally be reached on 9:00 AM-5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on 571-272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nirmal s. Basi  
Art Unit 1646  
5/16/2005

NB

  
GARY B. NICKOL, PH.D.  
PRIMARY EXAMINER